DOCKET FILE COPY ORIGINAL

ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
Advanced Television Systems and Their	)	MM Docket No. 87-268
Impact upon the Existing Television	)	
Broadcast Service	)	

To: The Commission

CONSOLIDATED OPPOSITIONS TO AND COMMENTS ON PETITIONS FOR RECONSIDERATION

Sinclair Broadcast Group, Inc. ("Sinclair"), by its attorneys, hereby submits its Consolidated Oppositions to and Comments on Petitions for Reconsideration filed in response to the Commission's Fifth Report and Order and Sixth Report and Order ("Allotment Order"), both released April 21, 1997 in the above-captioned proceeding. Specifically, Sinclair responds herein to petitions filed by the Association for Maximum Service Television, Inc., the Broadcasters Caucus and Other Broadcasters (collectively, "MSTV"), Hammett & Edison, Inc. ("H&E"), and Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network ("Trinity").

Background

Sinclair, a publicly-traded company with thousands of shareholders and a multi-billion dollar market capitalization, is one of the nation's largest group television owners. At present, Sinclair owns and operates 19 television stations, and has applications pending to acquire two

additional stations (each of which Sinclair is currently programming pursuant to a time brokerage agreement). Sinclair also provides programming services to eight other television stations pursuant to time brokerage agreements and is in the process of acquiring five additional television stations. Of the 34 television stations which Sinclair owns, proposes to own, or to which it provides programming services, 28 are UHF stations. Given the extent of its broadcast interests, Sinclair's transition to DTV will require an extraordinary capital investment, and Sinclair would like some reasonable assurance before beginning this process that its business will emerge from the DTV transition as viable as it is today. Accordingly, to protect its interests, Sinclair filed a Petition for Reconsideration[1/] in response to the Commission's Allotment Order, and Sinclair's response to the petitions identified above is closely related to its own position in this proceeding.

In its petition, Sinclair argued that the Commission's decision to replicate broadcasters' NTSC Grade B contours will create a serious and unfair competitive disparity between analog VHF stations relocating to the UHF digital band ("VHF/UHF stations") and analog UHF stations operating on the UHF digital band ("UHF/UHF" stations). Due to the Commission's Grade B replication policy, VHF/UHF stations are to receive robust allotments of digital power, while UHF/UHF stations receive power levels that in major markets are approximately one-twentieth those awarded to their VHF/UHF counterparts. As a result, Sinclair pointed out, UHF/UHF stations are unable to provide high-quality service within their "**core business areas**" to consumers utilizing television receivers with "out of the box" indoor antennas. These core areas are where stations sell the majority of their advertising time, where the major population centers

---

1/ Petition for Reconsideration, Sinclair Broadcast Group, Inc., dated June 13, 1997.

in the station's market are located, and which are the primary subject of local news and weather reports and the focus of stations' public interest obligations.

The Commission's apparent conclusion that UHF/UHF stations' power allotments are sufficient for high-quality service within these core areas is the result of certain unrealistic "planning factors," particularly those relating to receiver sensitivity and the use of outdoor receiving antennas. Specifically, the Commission assumes a UHF receiver noise figure of just 7 dB, making it clear that the Commission believes either that most television consumers will purchase either an outdoor DTV receiving antenna, or that television manufacturers will produce a DTV receiver much more sensitive than any on the market today. The Commission presents no evidence to support these unreasonable assumptions. Rather, it is likely that a substantial number -- if not a majority -- of consumers will view DTV on sets with "out of the box" indoor antennas of questionable performance, a factor made even more significant by the fact that many of these consumers' residences will be structures that are difficult to penetrate. As a solution to this problem, Sinclair argued in its Petition that the Commission should adjust its DTV Table of Allotments in whatever way necessary to replicate the current ease of reception within stations' core business areas -- for practical regulatory purposes, within stations' **Grade A** contours -- even if these modifications preclude the replication of all stations' Grade B contours.

In the event the Commission maintains its current Grade B contour replication policy and initial DTV allotment table, Sinclair's Petition argued that the Commission should at least modify its coverage maximization procedures. The Commission should relax its standard for determining whether a station is permitted to increase its power, weighing interference to another broadcaster only where such interference occurs inside the affected broadcaster's DTV Grade A

contour. If the Commission maintains its current Grade B standard, however, it should at least modify its definition of "additional interference" in areas falling outside stations' Grade A contours by moving to a F(50,50) based D/U ratio in those areas.

Discussion

I. The Commission Should Not Provide VHF/UHF Stations with Additional Interference Protection Until UHF/UHF Stations Are Guaranteed Replication of Ease of Reception Within Their Grade A Contours

MSTV and other parties argue that the Commission should alter its interference protection policy for VHF/UHF stations subject to the 1000 kW power cap.[2/] Under the Allotment Order, stations only receive interference protection to edge of their DTV coverage areas. MSTV asserts that VHF/UHF stations' coverage areas fail to reach their NTSC Grade B contours, and that, as a result, these stations do not enjoy DTV interference protection out to the Grade B. MSTV Petition at 9-11. According to MSTV, the UHF/UHF stations subject to the power minimum will, in contrast, have DTV coverage areas -- and interference protection -- extending beyond their NTSC Grade B contours. While MSTV does not contest the Commission's decision to expand smaller stations' DTV service, MSTV contends that "[w]hat is inaccurate is the inconsistent treatment of stations subject to the power maximum and stations subject to the power minimum." MSTV Petition at 11-12. MSTV argues that, for all licensees, the Commission should extend DTV interference protection out to the NTSC Grade B contour or the DTV coverage contour, whichever is greater. Id.

2/ Petition for Partial Reconsideration and Clarification of the Fifth and Sixth Reports and Orders Submitted by The Association for Maximum Service Television, Inc., Broadcasters Caucus and Other Broadcasters, dated June13, 1997 ("MSTV Petition").

Sinclair believes that the Commission should not even **consider** providing VHF/UHF stations with greater interference protection until it has taken action on the issues addressed in Sinclair's petition. As stated above, the Commission has allotted VHF/UHF stations in major markets approximately twenty times the power allotted to UHF/UHF stations, thereby sacrificing UHF/UHF service quality within these stations' critical core market areas in order to allow VHF/UHF stations to transmit their DTV signals a few miles "over the horizon" toward the edge of their NTSC Grade B contours. This power gap will permit VHF/UHF stations to provide high-quality service to viewers utilizing "out of the box" indoor antennas, and to replicate ease of reception within their core market areas; meanwhile, this gap will likely threaten the commercial viability of UHF/UHF stations. Simply put, the DTV issues facing UHF/UHF stations are much more urgent.

Accordingly, before attempting to minimize interference to VHF/UHF stations, the Commission must first take steps to ensure that UHF/UHF stations can replicate the current ease of reception within their Grade A contours. The Commission should adjust its DTV Table of Allotments in whatever way necessary -- including modifications to allotted power, channel spacing, transmitter height, and any other relevant parameter -- to accomplish this goal. To the extent that the Commission can at the same time replicate stations' Grade B contours, or provide all stations with interference protection out to their NTSC Grade B contours,[3/] it should do so, but

---

[3/] In practical terms, MSTV's argument that VHF/UHF stations do not enjoy NTSC Grade B replication is erroneous. Anyone at the perimeter of their NTSC Grade B contours can reliably and consistently receive DTV service through the use of antenna-mounted preamplifiers. In fact, if the Commission's "planning factors" had assumed the use of commonly-utilized antenna-mounted preamplifiers, these stations' DTV coverage areas would actually extend beyond their NTSC Grade B contours, and VHF/ UHF Grade B replication could actually be achieved at much lower power levels. The use of these

(continued...)

there should be no compulsion to achieve that secondary goal in these initial allotments.

If the Commission decides not to make the adjustments necessary to ensure that UHF/UHF stations can replicate ease of reception within their core business areas, the Commission should at the same time reject MSTV's request for greater interference protection. In this scenario, the only way UHF/UHF stations would be able to improve the quality of their service in these core areas would be to utilize the Commission's maximization procedures. If the Commission were to adopt MSTV's interference proposal, successful maximization would be less likely in most areas, given the prohibition on the creation of additional interference within stations' DTV coverage areas. In fact, MSTV's position is directly contrary to Sinclair's argument in its Petition that, in determining whether or not a station can increase its power via maximization, the Commission should weigh interference to another broadcaster only where such interference occurs inside the affected broadcaster's DTV **Grade A** contour. Sinclair continues to support this view, and believes that MSTV proposal should be rejected. Clearly, Sinclair's more liberal interference standard would better promote the development of high-quality UHF/UHF service in stations' core business areas.

If the Commission for whatever reason decides to provide VHF/UHF stations with interference protection out to their NTSC Grade B contours, the Commission should at least modify its definition of "additional interference" in areas falling outside stations' **Grade A** contours. Under the Commission's current policy, the Commission will utilize a F(50,10) based D/U ratio in order to determine whether or not additional interference results from another

---

3/ (...continued)
preamplifiers would have the same effect as multiplying stations' power levels by a factor of greater than two.

station's maximization efforts. Allotment Order at A-1. Sinclair believes that the threshold for interference in areas far removed from affected stations' core business areas should be less exacting, and that the Commission should therefore move to a F(50,50) based D/U ratio in areas outside stations' Grade A contours.

II. If Hammett & Edison's Analysis Leads to the Realization That Interference Has Been Substantially Underestimated, the Commission Must Move Expeditiously to Reformulate a New DTV Allotment Table

In its petition, Hammett & Edison ("H&E") raises significant questions about the accuracy of the Commission's interference analyses.[4/] In order to calculate interference levels, the Commission utilized terrain-sensitive calculation methods based on Version 1.2.2 of the ITS Irregular Terrain Model, also known as the Longley-Rice model. The Longley Rice model analyzes paths between the transmitter and assumed receiver locations that are contained within a grid of 2-kilometer-square cells that fill the entire protected service area. According to H&E, however, the Longley-Rice model is not always capable of determining, within certain confidence limits, whether a particular cell has service. H&E Petition at 4. In such instances, the Longley-Rice algorithm returns an "Error Code 3," indicating that any result for that cell is dubious or unusable. Instead of trying to measure the potential interference in such cells through another method, however, the Commission's procedure was to characterize such cells as enjoying "interference-free service." Thus, the Commission has ignored the potential for substantial amounts of additional interference. According to H&E, "there are situations within the top 30 markets where Longley-Rice errors are the only justification for classifying over half of the area or over half of the population with "interference-free" service. H&E Petition at 5.

4/ Petition for Reconsideration of Hammett & Edison, Inc., dated June 13, 1997 ("H&E Petition").

In light of H&E's analysis, the Commission should now subject its DTV allotment table to extensive reexamination, using an alternative calculation methodology if necessary. If the amount of additional interference is determined to be substantial, the Commission must acknowledge the flawed nature of the Allotment Order and move expeditiously to reformulate a new allotment table. If this occurs, the Commission should take advantage of this opportunity to start from scratch, creating a new allotment framework that incorporates more realistic planning factors and achieves replication of UHF/UHF stations' ease of reception within stations' Grade A contours.

Of course, any effort to achieve high-quality UHF/UHF service to viewers with indoor antennas would inevitably require an increase in the power allotted to these stations. Such power increases would yield further interference, on top of any additional interference uncovered as the result of H&E's analysis. In this scenario, it appears that the only way to reduce interference to the extent necessary to achieve these service goals would be to incorporate channels 60-69 into the allotment table, thereby alleviating excess channel congestion. If such action is necessary, the time will have clearly come for the Commission to acknowledge what most elements of the broadcast industry have long argued in this proceeding: that the Commission should not run the risk of debilitating the free, over-the-air television industry -- which offers important public service, creates jobs, provides enormous tax revenue to the Federal Treasury, and plays an integral role in the culture of the nation -- in order to harvest spectrum for auctions which, if recent experience is any indication, are likely to fall far short of the Commission's revenue projections.[5/]

[5/] See *Cell Phone Licensees Seek Bailout*, The Washington Post, July 12, 1997. The PCS C
(continued...)

III. Trinity's Proposal to Allot DTV Channel 29 to KUPN(TV) Should Be Denied

Finally, in its petition, Trinity requests that the Commission assign different DTV channels to certain full-power facilities in an effort to protect the continuing operation of several of its low power facilities.[6/] Included in its request was the proposed substitution of DTV Channel 29 for DTV Channel 20 for KUPN(TV), Las Vegas, Nevada. Trinity asserted that KUPN's current DTV allotment would interfere with its translator station currently serving Bullhead City, Arizona.

Sinclair opposes Trinity's requested channel substitution. First, Trinity's proposed reallotment is based exclusively on its review of the MSTV/NAB computer study, which only addressed geographical spacing. Trinity failed to consult any additional sources, and, as a result, it lacks sufficient information to propose a specific channel reallotment. Furthermore, as evidenced by the MSTV/NAB computer study, there are several alternative digital allotments for KUPN. If the Commission does consider modifying KUPN's digital allotment, KUPN would request the opportunity to study each potential allotment prior to the selection of an alternative channel. Finally, prior to considering the viability of any alternative channel for KUPN, it will be necessary to commission additional replication and interference studies utilizing recently released OET Bulletin 69. This additional analysis is needed to ensure that use of this alternative channel would not affect KUPN's operations. Accordingly, the Commission should deny

---

5/ (...continued)
Block auction in December of 1995 netted pledges of $10.2 billion, but less than two years later, dozens of these bidders are unable to make payment due to conditions in the wireless marketplace.

6/ Petition for Reconsideration, Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network, dated June 13, 1997 ("Trinity Petition").

Trinity's reallotment proposal for KUPN.

Conclusion

For the foregoing reasons, Sinclair urges the Commission to deny MSTV's request for additional interference protection and Trinity's proposed DTV channel substitution for KUPN, Las Vegas, Nevada.

Respectfully submitted,

SINCLAIR BROADCAST GROUP, INC.

By: 

Martin R. Leader
Gregory L. Masters
Stephen J. Berman
Lara N. Strayer

Its Attorneys

FISHER WAYLAND COOPER
LEADER & ZARAGOZA L.L.P.
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20006
(202) 659-3494

Dated: July 18, 1997

CERTIFICATE OF SERVICE

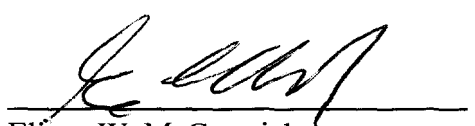
I, Elinor McCormick, a secretary to the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., hereby certify that true copies of the foregoing **"CONSOLIDATED OPPOSITIONS TO AND COMMENTS ON PETITIONS FOR RECONSIDERATION"** were sent this 18th day of July, 1997, by first class United States Mail, postage prepaid, upon the following:

Colby M. May
1000 Thomas Jefferson Street, N.W.
Suite 609
Washington, D.C. 20007

Victor Tawil
Senior Vice President
Association for Maximum
Service Television, Inc.
1776 Massachusetts Avenue, NW
Suite 310
Washington, DC 20036

Jonathan D. Blake
Ellen P. Goodman
Victoria M. Huber
Covington & Burling
1201 Pennsylvania Avenue, NW
Post Office Box 7566
Washington, DC 20044-7566

William F. Hammett, P.E.
Dane E. Ericksen, P.E.
Stanley Salek, P.E.
Hammett & Edison
Consulting Engineers
Box 280068
San Francisco, California 94128



Elinor W. McCormick

J:\DATA\CLIENT\TRANSFER\3070000.COS